THE LAW SCHOOL.

SUPREME COURT OF POW-WOW.

Life Insurance — Insurable Interest.

The case was submitted on the following facts: One Brown agreed to enter the plaintiff's employ and to serve him for the period of five years; whereupon the plaintiff insured Brown's life with the defendants for his own benefit. Brown died before the date fixed for entering plaintiff's employ, — and the defendants refuse to pay the policy on the ground that the plaintiff had no insurable interest.

Contracts of Marine or Fire Insurance, and contracts of Life Insurance, differ essentially in their nature. The former are strictly contracts of indemnity, and an insurable interest is necessary to prevent such contracts being made the means of speculation and profit. But contracts of life insurance are not contracts of indemnity. They are speculative contracts, whereby, in consideration of the payment of an annual premium, the insurers agree to pay a lump sum upon the death of the insured.[1] There is no reason why these contracts should not be enforced in all cases, — no matter what may be the relation between the insured and the assured. Yet the death of the insured is the contingency upon which the insurance money is payable, and the law must provide that these contracts do not prove an incentive to crime. This consideration of public policy is complied with if the assured at the time of taking out the policy has a reasonable expectation of pecuniary benefit or advantage from the continued life of the insured, and this is what is called an insurable interest.[2] No circumstance of loss need be taken into account, for it would be absurd to talk of one's loss in his own life, and the idea of loss in the law of life insurance is due to a misconception of the likeness between life and indemnity policies.

Has the plaintiff an insurable interest in the present case? We think that he has. He held a valid contractual relation to the insured which the law recognizes, and from which he had reason to expect a benefit. The fact that the contract relation was voidable by the insured does not alter the matter. The Statute of Frauds is an affirmative defence and personal to the insured. The defendants in this case cannot avail themselves of that defence, to rid themselves of their obligation to the assured.

LECTURE NOTES.

THE STRICT LEGAL SIGNIFICANCE OF THE TERM "EQUITABLE ESTATE." — (*From Prof. Ames' Lectures.*) — It is a misnomer to say that a *cestui que trust* has an equitable *estate* in land. What is meant by an equitable estate is, strictly speaking, not an *estate* (*i.e.*, any ownership in the *res* itself) at all, — it is a right *in personam* as distinguished from the right *in rem* possessed by the owner of a true estate. What is called a conveyance of an equitable estate is really only the assignment of a *chose in action*. Such conveyances are made without

[1] *Dalby* v. *India Ass. Co.*, 15 C. B. 365.
[2] *Conn. Mut. L. Ins. Co.* v. *Schaefer*, 94 U.S. 457, 460.

deeds, and require writing only to satisfy the Statute of Frauds. The legal estate and the so-called equitable estate cannot be held by the same person,— no man can hold property in trust for himself. When the *cestui que trust* gives up his interest to the trustee, there is no merger of estates. The trustee acquires nothing that he did not have before, but the *cestui's* right of action is extinguished, for no man can have a right of action against himself. The trustee's estate is not enlarged; it is only his liability that has changed. He holds the legal estate as he held it before; but the "equitable estate" is extinct.

This becomes important in cases like *In re Van Hagan.*[1] Here the testator gave to his mother a general power of appointment over certain real estate, and provided that if this power should not be exercised the estate should go to C. The mother, by her will, gave the property in question to certain trustees in trust for one G, who died during the testator's lifetime. The court held that the trustees should hold in trust for the heir-at-law of the mother. The testator had parted with his whole interest, leaving nothing which his heir could take; the power of appointment had been exercised, shutting out C; there was never any intent that the trustees should take for their own benefit; and the mother, having exercised her power, was in the position of an owner who had conveyed upon a trust which could not be fulfilled, and there was therefore a resulting trust in her favor.

Now, if the interest granted by the mother to G had been an *estate*, properly so called, the appointment as to that estate would have failed, and the estate would have passed to C. If she had appointed to G directly, G dying before the testator and no other appointment having been made, C would have taken the estate. So, if she had given the estate to another for years with remainder to G, G dying before the testator, it would seem that no appointment as to the remainder had been made, and this remainder would, by the testator's will, have gone to C. But as the interest given to G was not an estate, but an interest only, the whole estate being vested in the trustees, there was no failure of appointment, and C was barred.

The distinction between an estate, properly so called, and an equitable interest is overlooked in Massachusetts when property is devised by a will that discloses a trust, but keeps the object of the trust a secret between the testator and the trustee. Such property goes, in Massachusetts, by way of resulting trust, to the heirs or next of kin of the testator, as property not disposed of by the will, the secret trust being set aside as too indefinite.[2] This theory seems unsound. The testator cannot, as has already been said, hold both the legal estate and the equitable estate, so called — his entire interest was the right *in rem* which he devised to the trustee, and, consequently, nothing remains that the heirs or next of kin can take as property not disposed of by the will. The testator, it is true, created a right *in personam* against the trustee of which the heirs or next of kin may, in certain contingencies, obtain the benefit; but this right was not property of the testator.

LIABILITY OF AN INFANT FOR DECEIT IN INDUCING A SALE. — (*From Prof. Gray's Lectures.*) — Cases of some difficulty in regard

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1 Weekly Notes (1880) 164 (Ames' Cas. on Trusts, 239).

2 Gray, J., in *Oliffe* v. *Wells*, 130 Mass. 221. But see *Riordan* v. *Bannon*, Irish Rep. 10 Eq. 469 (Ames' Cas. on Trusts, 308); *Crook* v. *Brooking*, 2 Vern. 50, 106; *Smith* v. *Attersoll*, 1 Russ. 266; *In re Fleetwood*, 15 Ch. D. 594; *Scott* v. *Brownrigg*, L. R. 9 Irish, 246 (*Semble*); *Saylor* v. *Plaine*, 31 Md. 158, 167 (*Semble*), *contra.*